

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NICK CANCELLA, et al.,

Plaintiffs,

v.

ECOLAB INC.,

Defendant.

No. C 12-03001 CRB


**ORDER GRANTING MOTION TO
ENFORCE STIPULATION TO
DISMISS NINE OPT-IN PLAINTIFFS
WHO REFUSE TO PARTICIPATE IN
DISCOVERY**

In April of this year, the parties entered into a Stipulation Regarding Discovery of FLSA Opt-ins. See generally Mot. (dkt. 154); Landry Decl. (dkt. 154-1) Ex. 1. Defendant Ecolab Inc. now moves to enforce a provision of that stipulation, which states that “If a randomly selected Opt-In refuses to participate in the discovery process then, absent good cause, his/her claim will be dismissed.” Id. The Court finds this matter suitable for resolution without oral argument, pursuant to Civil Local Rule 7-1(b), VACATES the hearing currently set for November 7, 2014, and GRANTS the Motion. The nine opt-in Plaintiffs at issue did not participate in the discovery process. See Mot. at 3-4. Nor have they demonstrated any good cause for their lack of participation. See Opp’n (dkt. 155) at 4. Plaintiffs’ speculation that three of the nine opt-in Plaintiffs are still employed by Ecolab and that there is therefore a “reasonable inference . . . that they would like to have their rights addressed in this representative action, but they are apprehensive about taking further

1 affirmative actions to help prosecute the case against their current employer,” id., is clearly
2 inadequate. But so, too, is Ecolab’s argument that dismissal should be with prejudice.
3 See Mot. at 2; Reply (dkt. 156) at 1. The parties did not specifically stipulate to dismissal
4 with prejudice, see Landry Decl. Ex. 1, and the Court will not impose so harsh a remedy.

5 **IT IS SO ORDERED.**

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7 Dated: October 24, 2014

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10 CHARLES R. BREYER
11 UNITED STATES DISTRICT JUDGE
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